IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4634 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

the judgement? No
the judgement? No
the judgement? No
the judgement? No
the judgement? No
the judgement? No
the judgement? No
the judgement? No
the judgement? No J

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No

5. Whether it is to be circulated to the Civil Judge? No

INDIAN REYON KARMACHARI MANDAL

Versus

CONCILIATION OFFICER AND ASST COMMISSIONER OF LABOUR

Appearance:

MR NR SHAHANI for Petitioners

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/07/97

ORAL JUDGEMENT

The petitioner unions have preferred this Special Civil Application against the order dated 29.5.1997 passed by the Conciliation Officer, Junagadh. The grievance of the petitioner unions is that their claim with regard to the recognition of protected workmen has been rejected by the Conciliation Officer only on the ground that the petitioner unions had failed to communicate to the employer the names and addresses of such of the officers of the trade unions who were sought to be declared as protected workmen. It is not disputed by the learned Counsel for the petitioner that such communication by each of the two petitioner unions was sent only on 21.2.1997 and 19.2.1997 i.e. much after the date of 30th September, 1997. It is provided in Rule 66(1) of the Industrial Disputes (Gujarat) Rules, 1966 that such communication has to be sent before 30th September every year. It is precisely on this ground that the Conciliation Officer has not entertained the claim of the petitioner unions with regard to the declaration of the protected workmen of these two petitioner unions.

Mr.Shahani appearing on behalf of the petitioner unions has submitted that the time limit of 30th September fixed under Rule 66 is only directory and not mandatory. He has further argued that the Conciliation Officer did not afford any opportunity to the petitioner unions before passing the impugned order dated 29.5.1997 and further that the decision of the Conciliation Officer in terms of Sub-rule (4) of Rule 66 is final and the petitioner unions are left without any remedy although they had entered into four settlements in past.

I have heard learned Counsel. Prima facie when the rule says that "Every trade union connected with an industrial establishment to which the Act applies, shall communicate to the employer before 30th September every year....." Strict compliance with the time limit has to be made more particularly when there is no provision for the relaxation of this time limit. Even otherwise whether the rule is mandatory or directory the question is that the petitioner unions have failed to act in terms of the requirements of the Rule and instead of communicating the list of employees who were sought to be protected workmen before 30th September, 1996 they have sent their list on 21st February, 1997 and 19th February, 1997. Hence it is not even a case of substantial compliance. When the petitioner themselves have not

cared to comply with the requirements of the Rule and have not acted within time fixed under the Rule, there is no basis to afford any protection to them by this Court and no premium can be granted by this Court over their inaction. Sofar as the grievance of the petitioner unions that they were not heard by the Conciliation Officer before passing the impugned order and that no notice was given to them, it may be straight way observed that no punitive order has been passed by the Conciliation Officer against the petitioner unions. The Conciliation Officer, after taking into consideration the fact that these two unions had sent the lists in February, 1997 instead of September 1996 and had thus failed to act in accordance with the requirements of the Rule 66(1), has not considered it lawful to entertain their claim for recognition of the employees listed by them as protected workmen. There are more than one unions and in such matters when the list of the employees sought to be recognised as protected workmen are received the proportions have to be decided and an exercise has to be undertaken. Such exercise cannot wait indefinitely for receiving the list from different unions and therefore a time limit has been fixed under the Rule itself and that also shows that the adherence to the time limit fixed under the Rule is essential and logical to make the rule workable. In such matters when on admitted facts Rule has not been adhered and no punitive order has been passed by the Conciliation Officer, no grievance can be raised by the erring trade union in the facts of the case at hand, that it was not heard or that no notice was given by the Conciliation Officer while acting under Sub-rule (4) of Rule 66.

Rule 66 is reproduced hereunder for ready reference :

"66. Protected workmen.- (1) Every trade union connected with an industrial establishment to which the Act applies, shall communicate to the employer, before the 30th September every year the names and addresses of such of the officers of the trade union who are employed in that establishment and who, in the opinion of the trade union, should be recognised as protected workmen. Any change in the incumbency of any such officer shall be communicated to the employer by the trade union within fifteen days of such change.

(2). The employer shall, subject to the provisions of sub-section (4) of section 33 recognise such workmen to be protected workmen

for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen.

(3). Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen admissible for the establishment under sub-section (4) or section 33, the employer shall recognise as protected workmen only such maximum number of workmen :

Provided that, where there is more than one trade union in the establishment, the maximum number shall be so distributed by the employer amoang the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of each union the number of protected workmen allotted to it;

Provided further where the number of protected workmen allotted to a union under this sub-rule falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within days of the receipt of the employer's letter.

(4). When a dispute arises between an employer and any trade union in any matter connected with the recognition of protected workmen under this rule, dispute shall be referred to the Conciliation Officer concerned, whose decision thereon shall be final".

The decision of the Conciliation Officer thus cannot be said to be contrary to the requirements of Rule 66 and it is not made out from language of Rule 66 that any opportunity of hearing or notice is required to be given by the Conciliation Officer to such union who failed to communicate the list of its employees for recognition as protected workmen within the time limit fixed under the rule. In this regard Sub-rule (4) of Rule 66 provides that the decision of the Conciliation

Officer shall be final in case the dispute is referred to him. I do not find any error of fact or law in the impugned order dated 29.5.1997 passed by the Conciliation Officer so as to warrant any interference by this Court in a writ of certiorari nor there is any equity in favour of the petitioner unions so as to invoke the equitable jurisdiction. If the rule gives finality to the decision of the Conciliation Officer and no case is made out for interference by this Court, the argument of the learned Counsel that they are rendered remediless is incomprehensible. If the petitioner unions feel that they are left without any remedy, they have to thank themselves.

Besides this the petitioner union knew it very well that they had sent the lists in February,1997 whereas they were required to submit the same before 30th September, the matter remained pending with the Conciliation Officer, yet they did not approach the Conciliation Officer. Whether the notice had been given or not, being aware of their own lapse of sending the communication at a belated stage, they themselves could have approached the Conciliation Officer but they failed to approach the Conciliation Officer on their own. The Conciliation Officer passed the order on 29.5.1997 but the present Special Civil Application has been filed on 2.7.1997 when a period of more than nine months has already expired after 30th September, 1996, we are in July,1997; September, 1997 is not far of, and therefore also for a period short of three months I do not find any reason to interfere and as the concerned unions may now be preparing the list to be communicated for the next year as 30th September,1997 is approaching very fast. For the reasons as aforesaid I do not find any substance in this Special Civil Application and the same is accordingly dismissed in limine.

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m.m.bhatt.